



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

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**Testimony of Dr. Joshua M. Sharfstein, Secretary
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Before the Senate Education, Health, and Environmental Affairs Committee

Concerning the Sunset Review of the Maryland Board of Physicians

November 30, 2011

Thank you for the opportunity to testify today on behalf of the Maryland Department of Health and Mental Hygiene on the Department of Legislative Service's sunset evaluation of the Maryland Board of Physicians. We thank the staff of the Department of Legislative Services for their careful evaluation and for their detailed report.

The Maryland Board of Physicians is responsible for protecting Marylanders from incompetent or dangerous individuals who are practicing or are seeking to practice medicine in our state. The Board also provides important licensing services to thousands of Maryland professionals who provide lifesaving care to Maryland residents.

While the Department of Health and Mental Hygiene is not involved in the administration of the Board, we recognize its critical importance to patients and doctors alike in Maryland.

In 2005, during the Maryland Board of Physician's last evaluation, legislative reviewers found a series of problems, including a lack of sanctioning guidelines and an inability to resolve cases quickly.

Now, six years later, the current sunset evaluation of the Maryland Board of Physicians reflects ongoing concerns with the Board's function. Serious problems include worsening delays in case resolution, inadequate progress on sanctioning guidelines, inconsistency, and a range of other administrative and oversight problems.

The findings include:

A growing time to resolve cases. The report noted an excessive length of time to resolve cases, specifically the time a case is opened to vote to the time a charge and transmittal to Office of the Attorney General has been made. The review looked at two time periods: September 2002 through July 2006 and January 2007 through June 2011. During these time periods, the average length of time to resolve cases increased by 76 days. During the latter period from January 2007 through June 2011, cases were divided by those specific for physicians and those for allied health professionals combined. For Physician cases, the average time taken was 667 days and for allied health professionals the average time taken was 507 days. While allied health professionals generally took less time to resolve than cases involving physicians the processing times were still longer than expected given the volume and complexity of cases. The review found insufficient explanation about the cases that took longer than one year to resolve.

A prolonged time to resolve cases means that dangerous doctors practice for too long, risking the health of patients. It also means that doctors who are unfairly targeted must wait years to resolve concerns.

Lack of sanctioning guidelines. Such guidelines were first recommended in 2003, and have yet to be implemented. Well-developed guidelines will make enforcement more swift, fair, transparent, and uniform.

Lack of consistency. The sunset review noted a number of areas where the board practice appears to be inconsistent or arbitrary. For example, variation was noted in the number of sexual misconduct complaints needed to be received before closed cases are reopened.

These and other findings reflect poorly on the effectiveness and efficiency of Maryland's Board of Physicians. Maryland's patients and doctors deserve better.

In addition to implementing a wide range of changes recommended by legislative reviewers, these findings justify a thorough outside review and a new operational plan. The goal of this plan should be for Maryland to have an exemplary medical board.

The Department of Health and Mental Hygiene recommends:

1. The Board of Physicians should arrange for Dr. Jay Perman, President of the University of Maryland at Baltimore, to organize and oversee a comprehensive review. Dr. Perman is a senior leader of our state's public academic institution with a sterling reputation for fairness and integrity. Having served on the Kentucky Medical Board for six years, Dr. Perman has tremendous experience in this field. He also can draw on both the medical and legal resources of the University of Maryland System. We recommend the Board to initiate this consultation now, so Dr. Perman can provide an interim update to the legislature during the 2012 legislative session and a full report thereafter.

2. The General Assembly should provide for only a one-year extension of the Board of Physicians so that the General Assembly and Administration can review progress and implement recommendations from Dr. Perman and his team during the 2013 legislative session.
3. The new executive director of the Board should focus on process improvement within the Board of Physicians. In consultation with a number of Board members, DHMH is leading the search for a new executive director. We hope to make a selection in December.
4. To demonstrate its attention to this matter, the Board of Physicians should make a series of recommended changes before the session begins in January and report on its progress at that time.
5. The Board of Physicians should expedite the proposal of sanctioning guidelines. These guidelines should be specific, fair, and meaningful.

Also, the General Assembly may want to consider whether it would be appropriate to give the Governor the authority to appoint the chair of the Board of Physicians, subject to Senate confirmation, for a two-year term, rather than have the chair elected by the Board. This is consistent with how positions are selected for other critical state boards. This step could preserve independence, while enhancing accountability.

The legislative review notes disputes among health occupations boards on the scope of practice of various health care providers. Currently, DHMH does not have the authority to address these disputes. We are examining ways that these disputes could be resolved between boards, and plans to introduce legislation in the 2012 session that would allow for the appointment of scope of practice advisory committees to examine and make recommendations on the resolution of scope of practice disputes.

The Sunset Review process is one of the only opportunities for DHMH and the legislature to assure that the Board of Physicians is headed in the right direction. We look forward to working with you to make the most of this opportunity.